

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 433 OF 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIPAKKUMAR CHUNILAL BHATIA

VERSUS

THE STATE OF GUJARAT

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Appearance:

MS SEJAL SUTARIA for the Petitioner

MR HH PATEL for MR HC PATEL for the Respondent

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CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : /08/1999

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C A V JUDGMENT

#. The petitioner, by this Special Civil Application, is

praying for direction to the respondents to pass appropriate order of the appointment of the petitioner as passed in order dtd. 7/9/95 in the case of the other similarly situated persons.

#. The facts of the case in brief are that the petitioner was appointed as peon-cum-driver in the office of Mamlatdar Kacheri, Meghraj on 5/8/85. From the facts of this case, I find that the petitioner's appointment was purely on daily wages and that too for a fixed term. However, in the year 1992 the petitioner along with other persons filed a Special Civil Application No.8467 of 1992 which came to be decided on 25/4/94. The interim relief has been granted in favour of the petitioners therein against the termination of their services. It is the case of the petitioner that by virtue of the decision of this court he is deemed to be in service and entitled to all the benefits of the employment. Under the order dated 7/9/95, five petitioners of the Special Civil Application No.8467/92 and another petition were given the appointment but the petitioner has been excluded from this benefit. He has given a notice to the respondents in respect of his grievance but when nothing has been done he filed this Special Civil Application.

#. This writ petition is admitted by the court on 25/7/96. The petitioner is protected by interim relief. The order of the court dated 25/7/96 reads as under :

"Rule. By way of interim relief, it is directed that the respondent shall give appointment to the petitioner herein as "Peon" as is done in the case of the five persons named in order dated 7th September, 1995 (Annexure-B to the petition). the direction issued herein shall be complied with within a period of three weeks from the date of the receipt of this order"

#. This petition is contested by the respondents by filing a reply. It is really surprising that this reply is incomplete in all respects. All necessary facts are not given and the reply has been filed only for the sake of filing reply.

#. None of the parties to this petition have produced on the record of this petition the cause title of the Special Civil Application 8467/92. Be that as it may. It is admitted fact that the petitioner was a party to those proceedings. I do not find anything on the record of this special civil application that the court has not

granted any relief to him in earlier petition. How this has been mentioned in the reply by the respondents I fail to understand. Unless cause title of the Special Civil Application No.8467/92 produced on the record, then only the court may know, who is the person to whom relief was not granted. In the order of this court dated 25/4/94, I find that the court has observed "The petitioner No.4 in Special Civil Application No.8467/92 has filed the petition on total misapprehension and, therefore, an action based on apprehension may also not be justified." Though the learned counsel for the respondent contended that this judgment is contrary to the decision of the apex court but that is not the point for consideration at this stage. This judgment is not challenged by the respondents in Letters Patent Appeal. It is a binding decision and this ground now at this stage cannot be taken by the respondents. But for want of adequate material on the record it is difficult to decide this matter finally. The petitioner has been protected by this court by grant of interim relief and possible he would have been continued in the service.

#. In the result, this Special Civil Application is disposed of in the term that the petitioner may file a detailed representation in respect of his grievance made in this Special Civil Application to the Collector, Sabarkantha , Headquarters at Himmatnagar. In case such a representation is filed, it is expected of the Collector to decide the same within a period of one month from the receipt thereof. The petitioner to file this representation within a period of one month from today. Till the representation is decided by the Collector, the interim relief granted by this court shall continue and where the grievance of the petitioner is not acceptable by the Collector interim relief shall be continued for further 15 days from the date on which Collector makes the order. In case the representation is not submitted by the petitioner within a period of one month from today this interim relief granted by this court shall stand vacated automatically without reference to the court. Where the grievance of the petitioner are acceptable then all the consequential relief follows there from are to be granted to the petitioner. The Collector to pass a reasoned order where the grievances of the petitioner are not acceptable and sent the copy of the same to the petitioner by registered post letter Ad.

#. The Special Civil Application and rule stands disposed of in the term aforesaid with no order as to costs. However, looking to the facts of this case, liberty is granted to the petitioner for revival of this

Special Civil Application by filing a simple note, in  
case of any difficulty.

(S.K.Keshote, J.)

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